Civil Revision Petition No.68/2005
Pradep Joshi Vs. Gopal Das & Ors.

Date of Order ::: 21/10/05

Hon'ble Mr. Justice Ajay Rastogi

Mr. Deepak Pareek, for petitioner (objector).

This is objector's revision petition filed against Order dt.05/06/04 passed by Civil Judge (Jr.Dn.) Bundi in Execution Case No.04/91 while rejecting his objection petition No.15/93, which has been affirmed by Additional District Judge No.2, Bundi in CMA No.25/04.

Gopal Das, plaintiff, (respondent NO.1) filed civil suit for eviction and mesne profits. The trial Judge after taking into consideration material on record, decreed the suit vide judgment dt.22/10/90 directing defendants Balakdas & Jamnadas (respondent No.2 & 3 herein) to deliver possession of suit property and pay mesne profits @ Rs.3/- per month from the date of death of Govindas till delivery of possession.

Petition No.04/91 for execution of aforesaid decree was filed by decree holder (plaintiff), in which revision petitioner filed objection petition inter-alia asserting that suit property has been purchased by him from defendant Balakdas after making payment of rupees one lac in the year 1992 and he has been in possession over the suit property since 1988, as such the impugned decree of eviction is not executable because of valid title in his favour. After examining material on record, the Executing Court rejected objection petition vide order dt.05/06/04 while recording finding that petitioner failed to show valid agreement if any entered into for purchase of suit property and further failed to produce

any evidence to show that he has been in possession since 1988. The court below after taking note of the fact that the decree was passed on 22/10/90 and even if the suit property has been allegedly purchased in 1992 that will not give him any valid title over the suit property; against which appeal filed by petitioner too has been dismissed by appellate court. Hence this revision petition.

Shri Deepak Pareek, Counsel for petitioner has urged that court-below erred in law in not taking note of the fact that petitioner purchased suit property and has been in possession since 1988 much before issuance of the impugned decree and thus it is an error apparent on the face of record causing miscarriage of justice and being an ambiguity, it warrants interference by this Court in revisional jurisdiction. In support of his submission, counsel has placed reliance upon decision of this Court in ***Smt. Sarita Gupta Vs. Sudhir Jaju (1997(2) CCC 122),*** and further submitted that objector if not party to the decree is competent to file objection before the Executing Court and hence objection petition is maintainable.

I have considered contention advance by Counsel for petitioner and with his assistance, perused findings recorded by courts below in the Orders assailed in this revision petition. The Executing Court considering objection raised by petitioner, recorded finding that both the salient facts that petitioner purchased suit property in 1992 and entered into agreement and that he has been in possession over suit property since 1988, are not supported and established by any evidence on record. Once the suit was decreed in October, 1990, even if

petitioner is said to have purchased suit property in 1992 from Balak Das, or has been alleged in possession whereof since 1988,that will not give him valid title. That apart, petitioner has not been able to establish by leading any evidence on record his possession over suit property since 1988. Aforesaid finding has been concurred by appellate court.

Judgment on which Counsel has placed reliance, was of a case where it has been held that objector who was not party to the decree could have filed objection to the decree and he cannot be dispossessed. But in present case, when objector has failed to show any prima facie document in support of his conduct about purchase of suit property and possession over it, in my opinion, objection raised by petitioner has rightly been rejected by courts below and while holding so, no miscarriage of justice or any illegality has occasioned warranting invocation of revisional jurisdiction of this Court.

Consequently, the revision petition fails and is hereby dismissed, alongwith Stay Petition No.1385//05 in limine.

(Ajay Rastogi), J.

K.Khatri/68CR2005.